TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 144.

ADAMS EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE CIRCUIT COURT OF HART COUNTY, STATE OF KENTUCKY.

FILED JULY 18, 1907.

(20,809.)

(20,809.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 144.

ADAMS EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE CIRCUIT COURT OF HART COUNTY, STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	a	1
Information	1	1
Order to file information, &c	3	2
Order for *subpœna duces tecum*	4	3
Order for continuance	4	3
Order submitting cause	5	3
Stipulation as to facts, &c	6	4
Order filing motion for verdict for defendant	10	6
Motion to find verdict for defendant	10	6
Stipulation as to other cases abiding decision herein on writ of error from Supreme Court of the United States	11	7
Order that other cases abide decision herein on writ of error from Supreme Court of the United States	13	8
Judgment	14	8
Order overruling motion for new trial, &c	16	9
Motion for new trial	17	9

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 29, 1908.

	Original.	Print.
Transcript of testimony ..... (omitted in printing)..	19	—
Testimony of Dr. J. W. Craddock .....(" ")..	19	—
J. M. Joyce.....(" ")..	23	—
J. L. Chatten .....(" ")..	26	—
G. T. Kessinger .....(" ")..	29	—
J. B. McHadden .....(" ")..	31	—
W. H. Carter .....(" ")..	33	—
Stenographer's certificate.(" ")..	35	—
Order on stenographer to make transcript of evidence, &c.....	36	10
Order making transcript of evidence part of record.....	36	11
Order allowing writ of error	38	11
Petition for writ of error.....	39	11
Assignment of errors	39	11
Writ of error (copy).....(omitted in printing)..	41	—
Bond on writ of error	43	12
Citation and service (copy).....(omitted in printing)..	44	—
Clerk's certificate	46	13
Writ of error (original).....	47	14
Citation and service (original).....	50	15
Designation by plaintiff in error of parts of record to be omitted in printing.....	52	15

a ADAMS EXPRESS COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY.

TRANSCRIPT OF THE RECORD.

1 Pleas Before the Hon. S. E. Jones, Judge of the Hart Circuit Court, at the Court-House Thereof, in the Town of Munfordville, Kentucky, on the 30th Day of April, 1907.

Hart Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE ADAMS EXPRESS COMPANY, Defendant.

Information.

The Commonwealth of Kentucky, by and through the undersigned Commonwealth's attorney for the Tenth Judicial District of Kentucky, and County Attorney for Hart County, comes and asks leave of Court to file an information against the Adams Express Company on the charge of knowingly furnishing spirituous liquor to a person who is in the habit of becoming intoxicated by the use of such liquor.

She says that the said Adams Express Company is a joint stock company consisting of many thousand members scattered over many States of the Union, none of the individual members of which are known to her.

That the said Adams Express Company is engaged in the business of a common carrier of merchandise for hire, and as such operates an express business in the County of Hart and State of Kentucky, and elsewhere. That on the 14th day of August, 1906, the
2 said Adams Express Company, its agents and servants, did in the County of Hart and State aforesaid, furnish a certain quantity of spirituous liquor, less in amount than five gallons, to one W. G. Tharpe; that said W. G. Tharpe was at said time a person who was in the habit of becoming intoxicated by the use of such spirituous liquor and was known to be a person who was in the habit of becoming intoxicated by the use of such liquors to the said Adams Express Company and its agents and servants who so furnished said liquor to him, and said liquor was so furnished to him by them (the said Adams Express Company, its agents and servants) with full knowledge that he was a person who was in the habit of becoming intoxicated by the use of such liquor, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the Commonwealth of Kentucky.

Thereby the defendant became and is liable to the Commonwealth

of Kentucky in the sum of Fifty Dollars, for which sum and the cost of this action she asks judgment.

D. A. McCANDLESS,
Com'lth Att'y, Tenth Jud. Dist.
C. B. LORIMARE,
County Att'y for Hart County.

Indorsed: Filed in open court January 8, 1907, and summons and copy issued to Hart County this January 8, 1907. J. M. Bale, Clerk.

3 Summon as witnesses: W. G. Tharpe, Dr. J. W. Craddock, J. M. Joyce, J. T. King, Dr. J. H. Clark, J. B. McHatten, J. L. Chatten, G. T. Kessinger, E. E. Biggs.

Hart Circuit Court, January Term, Second Day, January 8, 1907.

On this day came the Attorney for the Commonwealth and produced and filed the following informations, to wit:

"A."

COMMONWEALTH OF KENTUCKY
vs.
THE ADAMS EXPRESS COMPANY.

B to Z, Inclusive.

SAME
vs.
SAME.

I to IX, Inclusive.

SAME
vs.
SAME.

which were ordered to be filed and placed on this Court's docket for trial on the 12th day of the present term, and summons and copy issue for the Defendant on each of said cases to Hart County, returnable to the 12th day of the Term.

On January 18, 1907, the Court made the following order in the above entitled cases:

4 Hart Circuit Court, January Term, 11th Day of Term, January 18, 1907.

A to Z, I to IX.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

On motion of the Commonwealth of Kentucky, by her attorney, a *subpœna duces tecum* is awarded W. K. Jameson, Agent of said defendant, and he is directed to appear in this Court on the 12th day of its present term and testify as a witness herein for plaintiff in all the above numbered informations, and bring with him the books of said company, showing all consignments and deliveries of express made by said defendant company during past twelve months.

The Court made the following order of continuance, and witnesses were recognized in the following entitled cases, January 19, 1907.

Hart Circuit Court, January Term, 12th Day of Term, January 19, 1907.

A to Z, I to IX.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

Information.

5 By agreement of parties herein, ordered that these thirty-five (35) informations be continued.

Thereupon, came W. K. Jameson, S. C. Hodges, W. H. Carter and W. Ellis (colored), J. B. McHatten, J. L. Chatten, witnesses for the Commonwealth, and were each recognized in the sum of One Hundred Dollars for their appearance herein on the second day of the next April Term of this Court to testify for the Commonwealth, and they will not depart without leave of the Court.

Hart Circuit Court, April Term, 4th Day of Term, April 18, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Order.

This cause having been called for trial, came the parties by attorney, and defendant entered plea not guilty, and filed in open court

the stipulation of agreed facts to be taken and considered as evidence in this case, without further proof of same, and providing that either side might prove any facts not inconsistent with those therein stipulated.

By agreement of parties to this case, a jury trial was waived,
6 and the law and facts submitted to the Court with the request that the Court state in writing, separately, its conclusion of the law and facts.

Hart Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE ADAMS EXPRESS COMPANY, Defendant.

Information.

Stipulation.

There being thirty-five cases, as above entitled, pending in this court, in which the defendant is charged with furnishing liquor in quantities of less than five gallons to persons who are in the habit of becoming intoxicated by the use of liquor, contrary to the statute; and, whereas, all such deliveries are charged to have been made to one of the following persons, to wit: W. G. Tharpe, Will Ellis, W. H. Carter, Berry Hawkins and George Dixon, it is hereby agreed and stipulated, for the purpose of avoiding unnecessary appeals or writs of error, that five of said cases, each involving a delivery of liquor to one of said persons, shall be tried in regular form, and that the remaining cases shall not be tried, but that the same shall be continued on the docket of the court from term to term; and that
7 said cases shall abide the final judgment, or if appealed, then the final judgment on appeal, which shall be entered in the case to be tried involving a delivery to the same persons, and that the same judgment shall be entered in said case or cases, which shall finally be entered in the case to be tried which shall involve a delivery to the same person.

That in the trial of the five cases aforesaid, the following facts shall be taken and considered as evidence in the cases without further proof of the same; but either side may prove any facts not inconsistent with the facts herein stipulated:

1st. The Adams Express Company is a joint stock association consisting of many thousand members whose names are unknown to the plaintiff.

2nd. Said Adams Express Company is engaged in the business of a common carrier of goods and merchandise by express for hire in, between and throughout many States of the United States, and does business in Hart County, Kentucky, and between said county and the cities of New Albany, Indiana, and Nashville, Tennessee.

3rd. That on the several dates mentioned in the informations herein, the Adams Express Company knowingly furnished and delivered through W. K. Jameson, its agent in Hart County, Ken-

tucky, to W. G. Tharpe, Will Ellis, W. H. Carter, Berry Hawkins and George Dixon, each a package of spirituous liquor in quantities of less than five gallons, in Hart County, State of Kentucky. That prior to the time when said liquor was furnished and delivered
8 as aforesaid, each of said parties named, to whom said liquor was furnished and delivered, had sent by mail an order for said liquor to J. T. Doores at Nashville, Tennessee, or to J. P. Dant at New Albany, Indiana, said Doores and Dant being at all times mentioned herein licensed liquor dealers at Nashville and New Albany respectively, and maintained a place of business for the sale of liquor at said points. That said orders from said several persons to said Doores and Dant respectively were accompanied by a check or money order payable to said Doores or said Dant to cover the purchase price of said liquors. At said time or times said Dant and said Doores were licensed liquor dealers at Louisville and Bowling Green, Kentucky, respectively, and maintained places of business for the sale of liquor at said points.

5th. That on the receipt of said orders said Doores and said Dant accepted the same at their respective places of business above mentioned, to wit: New Albany, Indiana, and Nashville, Tennessee, and for the purpose of filling said orders delivered to Adams Express Company at Nashville and New Albany, respectively, several packages of liquor, and prepaid the defendant's charges for carriage of the same to the several persons above named in Hart County, Kentucky.

6th. That thereupon Adams Express Company carried said packages from its offices in Nashville and New Albany, over its lines into Hart County, Kentucky, and delivered the same to the consignees thereof, who were the same persons who had made said orders
9 and to whom the information herein charge that defendant furnished said liquor, and said transactions are the same and no other than those charged in the informations herein.

At all times herein mentioned local option was in force in Hart County at the place where said liquors were delivered, and the sale of liquor in less than five gallons was prohibited by the Kentucky Statutes.

It is further stipulated and agreed that a jury trial in these cases be and the same is hereby waived and the law and facts submitted to the Court, and the Court shall state separately in writing, its conclusions of the law and facts.

SIMS, DU BOSE & RODES,
WATKINS & CARDEN,
Attorneys for Defendant.
D. A. McCANDLESS,
Commonwealth's Attorney, Tenth District, Kentucky.

Indorsed: Filed in open court April 18, 1907. J. M. Bale, Clerk.

10 Hart Circuit Court, April Term, 8th Day of Term, April 23, 1907.

No. A.
" F.
" I.
" L.
" Z.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

Order.

Came the defendant, Adams Express Company, and filed written Motion to find it not guilty, because the shipment to, and delivery of liquor at Bonnieville, Hart County, Kentucky, was interstate commerce and protected as such by the Constitution of the United States.

Hart Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Motion.

Came the defendant, the Adams Express Company, and at the conclusion of the testimony in this case, the law and facts having been submitted to the Court, moved the Court to find as a matter of fact that the shipments and delivery of liquor referred to
11 in this information were made and begun out of the State of Kentucky and ended by delivery to the consignee at Bonnieville, in the State of Kentucky; and constituted interstate commerce within the meaning of the clause of the Federal Constitution, which gives to Congress of the United States power to regulate commerce between the States; and further, that Section 1307 of the Kentucky Statutes, to the extent that it is sought to be applied to the shipment and delivery of liquor referred to, is void, and in contravention of the clause of the Federal Constitution above referred to, which gives to Congress the exclusive power to regulate commerce among the States.

Comes the defendant and moves the Court to find it not guilty, as charged in the information, upon the grounds as set forth above in this motion.

Indorsed: Filed in open court April 23, 1907. J. M. Bale, Clerk.

Hart Circuit Court.

No. A.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Stipulation and Order.

12 No. F.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Stipulation and Order.

No. I.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Stipulation and Order.

No. L.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Stipulation and Order.

No. Z.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Stipulation and Order.

For the purpose of avoiding unnecessary writs of error from the Supreme Court of the United States in the above styled cases, it is hereby stipulated and agreed between the Adams Express Company and the Commonwealth of Kentucky that the above entitled cases are substantially like each other, and that a writ of error
13 in the case styled above, Commonwealth of Kentucky *vs.* Adams Express Company #A, shall be sued out, and that the other above entitled cases shall abide the decision of the Supreme Court of the United States in said case #A above, to wit, that in

which is involved the delivery of liquor to one W. G. Tharpe, at Bonnieville, in Hart County, Kentucky; that no judgment be entered for the present in any of said cases except the one in which the writ of error mentioned above shall be sued out, but that the same judgment shall be entered in all of the said cases set out above, five in number, as shall be ordered by the Supreme Court of the United States in said case in which a writ of error is to be sued out. And in the meantime said cases shall be continued on the docket from term to term.

Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

Come the parties in each and all of the above styled cases by attorneys and filed the above agreed stipulation providing for the suing out of a writ of error in one of the said cases, to wit, #A, for the purpose of suing out a writ of error from the Supreme Court of the United States, and that each and all of same shall abide the decision of the Supreme Court of the United States in said case in which said writ of error is to be sued out, and it is now so ordered by the Court.

14 Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE ADAMS EXPRESS COMPANY, Defendant.

Judgment.

Upon the hearing of this case the Court finds the facts to be as follows:

That W. G. Tharpe, by order sent to J. T. Doores at Nashville, Tennessee, or to J. P. Dant, at New Albany, Indiana, purchased spirituous liquor in quantity less than five gallons.

That the defendant, the Adams Express Company, took charge of said liquor in Nashville, Tennessee, or New Albany, Indiana, and delivered it to W. G. Tharpe in Hart County, Kentucky.

That at the time it so delivered said liquor to said Tharpe, said Tharpe was an inebriate and in the habit of becoming intoxicated by the use of such liquor, and defendant's agent at Bonnieville, Kentucky, by whom defendant delivered said liquor to said Tharpe, well knew at the time said liquor was so delivered to said Tharpe, and prior thereto, that said Tharpe was an inebriate and in the habit of becoming intoxicated by the use of said liquor.

15 As a matter of law, this Court adjudges that the said transportation and delivery of said liquor to said Tharpe by defendant, did not constitute Interstate Commerce, within the meaning of the clause of the Federal Constitution which gives to the Congress of the United States power to regulate commerce between

the States, and that the defendant is guilty of knowingly furnishing liquor to an inebriate, as charged in this information herein.

The motion of defendant to find it not guilty, made at the conclusion of the testimony in this case, is overruled.

It is therefore adjudged by the Court that the Commonwealth of Kentucky recover of the defendant, the Adams Express Company, Fifty Dollars and her costs in this prosecution expended.

To the finding and ruling of the Court that the agent of the defendant at Bonnieville, Hart County, Kentucky, knew that W. G. Tharpe at the time of the delivery of the liquor to him, and prior thereto, was an inebriate person in the habit of becoming intoxicated by the use of such liquor, the defendant excepts.

To the finding and ruling of the Court that the shipment of said liquor from Nashville, Tennessee, or New Albany, Indiana, and delivery thereof to said Tharpe at Bonnieville, Hart County, Kentucky, did not constitute Interstate Commerce, within the meaning of the clause of the Federal Constitution, which gives to Congress the power to regulate commerce between the States, the defendant excepts.

16 To the finding and ruling of the Court adjudging defendant guilty, as charged, and that the Commonwealth of Kentucky recover of it the sum of $50.00 and its costs in this prosecution expended, the defendant excepts.

To the judgment of the Court overruling its motion to find defendant not guilty, the defendant excepts.

Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Order on Motion for New Trial.

Came the defendant, the Adams Express Company, and filed in open Court its motion and grounds for a new trial, and the Court being advised, adjudges that said motion be and is now overruled.

Thereupon, came defendant and prayed an appeal to the Court of Appeals of Kentucky, which the Court refused to grant, the fine in this case not exceeding the sum of Fifty Dollars.

17 Hart Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Motion for New Trial.

The defendant, the Adams Express Company, moves the Court to set aside its finding and decision herein, and to grant it a new trial upon the following grounds, to wit:

First. Because the Court erred in admitting incompetent testimony offered by the Commonwealth.

Second. Because the Court erred in finding as a matter of fact that W. G. Tharpe, the person to whom the liquor named in the information is alleged to have been delivered, was an inebriate, or person in the habit of becoming intoxicated by the use of liquor.

Third. Because the Court erred in further finding as a matter of fact that at the time of the alleged delivery of said liquor to said Tharpe, defendant's agent at Bonnieville, Kentucky, knew he was an inebriate or person in the habit of becoming intoxicated by the use thereof.

Fourth. Because the Court erred in finding as a matter of law that the shipment of liquor mentioned in the information from Nashville, Tennessee, or New Albany, Indiana, to Hart County, State of Kentucky, and its delivery at that place to said Tharpe did not constitute Interstate Commerce within the meaning
18–35 of the clause of the Federal Constitution which gives to the Congress power to regulate commerce between the States.

Fifth. Because the Court erred in failing to find as a matter of law that the shipment of liquor in question from Nashville, Tennessee, or New Albany, Indiana, to Bonnieville, Hart County, Kentucky, and its delivery there to W. G. Tharpe, constituted Interstate Commerce within the meaning of that clause of the Federal Constitution, which gives to Congress the power to regulate commerce between the States, and in further failing to find as a matter of law that the law of the State of Kentucky, and the section of the Kentucky Statutes under which this proceeding is being prosecuted, was void to the extent that it may be applied to such a shipment.

Sixth. Because the finding of the Court of facts and of law are against the law and evidence.

Wherefore, defendant prays the judgment of the Court.

SIMS, DU BOSE & RODES,
WATKINS & CARDEN,
Attorneys for Defendant.

Indorsed: Filed in open court April 30, 1907. J. M. Bale, Clerk.

* * * * * * * *

36 Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

COMMONWEALTH OF KENTUCKY
vs.
ADAMS EXPRESS COMPANY.

On motion of defendant, the official stenographer of this Court is ordered to make a transcript of the evidence from the stenographic report of the evidence taken in this case, and file same and carbon copy thereof as part of the record in this case. It is ordered that the said original transcript of evidence be part of the record for the purpose of appeal without making a copy.

Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Order on Transcript.

Came the Adams Express Company by attorneys, and tendered transcript of evidence herein made by the Official Stenog-
37 rapher, Arch H. Pulliam, and same being certified as correct by said stenographer and approved by the Judge, the Hon. Samuel E. Jones, before whom the trial was had, it is ordered to be and is now made part of the record without being spread upon the order book.

38 The above transcript of evidence is indorsed as follows: Tendered and filed in open court, April 30, 1907.
J. M. BALE,
Clerk Hart Circuit Court.

Hart Circuit Court, April Term, 14th Day of Term, April 30, 1907.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Order Allowing Writ of Error.

This day came Adams Express Company by its attorneys, and presented petition for writ of error from the Supreme Court of the United States and assignment of error thereon. It is hereby ordered that the writ is allowed; to operate as supersedeas on defendant giving bond payable to plaintiff, to be approved by the Court, in the sum of $500.00.

39 COMMONWEALTH OF KENTUCKY:

Circuit Court of Hart County.

No. A.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
ADAMS EXPRESS COMPANY, Defendant.

Petition for Writ of Error and Assignment of Errors.

To the Honorable Judge of the Circuit Court of Hart County, Kentucky:

Adams Express Company prays a writ of error from the Supreme Court of the United States to review a final judgment in this Court

rendered against your petitioner in the suit above entitled, on the 30th day of April, 1907, by the Circuit Court of Hart County, Kentucky, that being the highest Court of the State in which a decision in the suit could be had, and assigns as error:

First. That the transactions on account of which the Adams Express Company was proceeded against by information, and on account of which judgment was entered against Adams Express Company constituted Interstate Commerce, and were not subject to regulation by the State of Kentucky, and that the Statutes of Kentucky under which this proceeding was instituted and prosecuted to judgment are as applied to said transactions in conflict with the commerce clause of the Constitution of the United States.

40–42 Second. That the Court erred, in overruling the motion of the defendant to find defendant not guilty on the grounds set forth in said motion, and in finding that the transaction on account of which defendant was proceeded against by information did not constitute Interstate Commerce within the meaning of the commerce clause of the Constitution of the United States, and in entering judgment against defendant, and in overruling defendant's motion for a new trial.

Adams Express Company therefore prays that the judgment of the Circuit Court of Hart County, Kentucky, may be reversed.

ADAMS EXPRESS COMPANY,
By Its Attorneys, LAWRENCE MAXWELL, JR.,
SIMS, DU BOSE & RODES,
WATKINS & CARDEN.

Indorsed: Presented in open court April 30, 1907. J. M. Bale, Clerk.

* * * * * * *

43 Know all men by these presents, That we, Adams Express Company, as principal, and H. A. Watkins and C. R. Carden, as sureties, are held and firmly bound unto The Commonwealth of Kentucky, in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said The Commonwealth of Kentucky, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 30th day of April, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a session of the Circuit Court of Hart County, Kentucky, in a suit pending in said Court, between Commonwealth of Kentucky, Plaintiff, and Adams Express Company, Defendant, a judgment was rendered against the said Adams Express Company, and the said Adams Express Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Kentucky, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date thereof.

Now, the condition of the above obligation is such, That if the said Adams Express Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

44 & 45 ADAMS EXPRESS COMPANY. [SEAL.]
J. S. GRAYDON, *Attorney.*
H. A. WATKINS. [SEAL.]
C. R. CARDEN. [SEAL.]

Sealed and delivered in presence of

____ ____.
____ ____.

Approved by
SAM. E. JONES,
Sole Judge of the Circuit Court of Hart County, Kentucky.

Endorsed: "Filed in Office, May 6, 1907. Attest: J. M. Bale, Clerk Hart Circuit Court."

* * * * * * * *

46 COMMONWEALTH OF KENTUCKY:

Hart Circuit Court.

I, J. M. Bale, Clerk of the Circuit Court of Hart County, Kentucky, certify that the foregoing pages contain a full and complete transcript of the record in the case of the Commonwealth of Kentucky *vs.* The Adams Express Company, including the judgment and findings of the Court as fully as same appears from the records and files of my office.

And I further certify that there is hereto attached the original Writ of Error from the Supreme Court of the United States, filed in this office on the 6th day of May, 1907, and the citation of service thereof; and also a copy of Writ of Error Bond, as the same appears from the original now on file in my office.

In testimony whereof, I have hereunto set my hand and caused my official seal to be hereunto affixed.

Done at the Court House at Munfordville, Hart County, this 14th day of May, 1907.

[Seal Hart Circuit Court, Kentucky.]

J. M. BALE,
Clerk of the Circuit Court of Hart County, Kentucky.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judge of the Circuit Court of Hart County, Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Hart County, Kentucky, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Commonwealth of Kentucky, plaintiff, and Adams Express Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,

48 or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Adams Express Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of May, in the year of our Lord one thousand nine hundred and seven.

[Seal 6th Circuit Court, Wes. Dis. Ky., U. S. of America.]

A. G. RONALD,
Clerk of the Circuit Court of the United States for the Western District of Kentucky,
By HENRY F. CASSIN,
Deputy Clerk.

Allowed by—

SAM. E. JONES,
Sole Judge of the Hart Circuit Court, Commonwealth of Kentucky.

49 [Endorsed:] Filed in office May 6th 1907. J. M. Bale, Clerk Hart Circuit Court.

50 UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of Hart County, Kentucky, wherein Adams Express Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel E. Jones, sole Judge of the Hart Circuit Court, Kentucky, this 30th day of April, in the year of our Lord one thousand nine hundred and seven.

SAM. E. JONES,
Sole Judge of the Hart Circuit Court, Kentucky.

51 Service acknowledged.

J. C. W. BECKHAM,
Governor of Kentucky.
NAPOLEON B. HAYS,
Attorney General of Kentucky.
D. A. McCANDLESS,
Commonwealth's Attorney for the Tenth Judicial District of Kentucky.

Filed in office May 13th, 1907.

J. M. BALE,
Clerk Hart Circuit Court.

52 Supreme Court of United States.

No. 406, October Term, 1907.

ADAMS EXPRESS COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF KENTUCKY.

Notice for the Purpose of Abridging the Printed Record, under Rule 10, Clause 9.

Plaintiff in error considers the following portions of the record unnecessary for the consideration of the case on the errors which it has assigned. It therefore proposes to omit the same in printing the record, towit:

1. The transcript of the evidence in the Hart circuit court pages 19 to 35 inclusive.

2. The copy of the writ of error from the supreme court of the United States, pages 41 and 42, being a duplicate of the original writ of error attached to the transcript.

3. Copy of the citation, pages 44 and 45, being a copy of the original citation attached to the transcript.

LAWRENCE MAXWELL, JR.,
JOSEPH S. GRAYDON,
Counsel for the Plaintiff in Error.

Service of the foregoing notice accepted this July 24th, 1907.
N. B. HAYS,
Attorney General of Kentucky.

53 [Endorsed:] File No. 20809. Supreme Court U. S., October Term, 1907. Term No. 406. Adams Express Company, P. E., *vs.* Commonwealth of Kentucky. Designation by Counsel for plaintiff in error of parts of record to be omitted in printing, & acceptance of service. Filed July 27, 1907.

Endorsed on cover: File No. 20,809. Kentucky, Hart County circuit court. Term No. 144. Adams Express Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed July 18th, 1907. File No. 20,809.

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 144.

ADAMS EXPRESS COMPANY, *Plaintiff in Error.*

vs.

THE COMMONWEALTH OF KENTUCKY.

In Error to the Circuit Court of Hart County, Kentucky.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was an information in the Circuit Court of Hart County, Kentucky, against The Adams Express Company, to recover a statutory penalty of fifty dollars, on the charge that the defendant furnished spirituous liquor to W. G. Tharp, a person alleged to be in the habit of becoming intoxicated. The information was based on section 1307, Kentucky Statutes, 1903, which provides:

"Any person who shall sell, lend, give, procure for, or furnish spirituous, vinous or malt liquors, or any mixture of either, knowingly, to any person who is an inebriate or in the habit of becoming intoxicated or drunk by the use of any such liquors, or who shall suffer or permit any such

person to drink any such liquors in his barroom, saloon, or upon the premises under his control or in his possession, shall be fined, for each offense, fifty dollars," etc.

The defendant pleaded not guilty. The case was tried without a jury on an agreed statement of facts, which provided that either party might prove other facts not inconsistent with those therein stipulated (R. 3, 4).

It appears from the agreed statement (R. 4) that Tharp bought and paid for the liquor in Nashville, Tennessee, or New Albany, Indiana, and that the sellers, who were licensed liquor dealers in those places, shipped it to him by the defendant, prepaying the freight charges. The defendant was a common carrier for hire between those points, and its supposed offense therefore consisted in carrying the interstate shipment from Tennessee or Indiana and delivering it to the consignee in Kentucky. The court also found, from the evidence, that Tharp was in the habit of becoming intoxicated, and that defendant's agent in Hart county knew it when he delivered the liquor (R. 8).

The defendant raised the objection that the transaction was interstate commerce by a written motion to acquit on that ground (R. 6), and by a motion at the conclusion of the testimony (R. 6) "to find as a matter of fact that the shipments and delivery of liquor referred to in this information were made and begun out of the State of Kentucky and ended by delivery to the consignee at Bonnieville, in the State of Kentucky, and constituted interstate commerce within the meaning of the clause of the Federal Constitution, which gives to the Congress of the United States power to regulate commerce between the States; and further, that section 1307 of the Kentucky Statutes, to the extent that it is sought to be applied to the shipment and delivery of liquor referred to, is void and in contravention of the clause of the Federal Constitution above referred to,

which gives to Congress the exclusive power to regulate commerce among the States."

The court adjudged as matter of law (R. 8, 9); "that the said transportation and delivery of said liquor to said Tharp by defendant did not constitute interstate commerce within the meaning of the clause of the Federal Constitution, which gives to the Congress of the United States power to regulate commerce between the States, and that the defendant is guilty of knowingly furnishing liquor to an inebriate, as charged in the information herein," and rendered judgment against it for fifty dollars.

The federal question was raised again in the fourth ground of defendant's motion for a new trial (R. 10), which was overruled (R. 9).

The defendant prayed an appeal to the Court of Appeals of Kentucky, which was overruled (R. 9), and thereupon the writ of error was sued out, which brings the case here, the parties stipulating that judgment in other similar cases should be suspended pending the decision of this court (R. 7).

ASSIGNMENT OF ERRORS.

The plaintiff in error submits that the transaction, on account of which it was prosecuted and fined in the State court, was interstate commerce, and that the Kentucky statute, if it applies thereto, as the court below held, is, in view of the admitted facts of the case, repugnant to the commerce clause of the Constitution of the United States. Specific assignments of error on this ground are made in the petition for the writ of error, which the court below allowed (R. 11, 12).

ARGUMENT.

I.

This Court has Jurisdiction.

The federal question was duly raised and overruled in the trial court, as we have pointed out in the foregoing statement of the case.

The case is brought here direct because the Circuit Court of Hart County is the highest court of the State in which a decision can be had. The information was based on section 1307, Kentucky Statutes, 1903, which fixes the only penalty at a fine of fifty dollars. Section 347 of the criminal code provides that "the court of appeals shall have appellate jurisdiction in penal actions and prosecutions for misdemeanors in the following cases only, viz: if the judgment be for a fine exceeding fifty dollars, or for imprisonment exceeding thirty days; or if the judgment be for the defendant, in cases in which a fine exceeding fifty dollars, or confinement exceeding thirty days, might have been inflicted," and in civil cases appeals can not be taken to the Court of Appeals if the value in controversy be less than two hundred dollars, Ky. Stat. 1903, Sec. 950. The trial court therefore properly refused an appeal to the Court of Appeals of Kentucky (R. 9), and allowed the writ from this court with supersedeas (R. 11).

II.

The Transaction was Interstate Commerce.

This proposition hardly seems to call for argument in view of prior decisions. Tharp lawfully bought and paid for the liquor in another State from dealers duly licensed there to sell it. The only connection of the defendant with the transaction was to carry the liquor to Kentucky and

there deliver it to the consignee. This it did in discharge of its duty as a common carrier engaged in interstate transportation, under the laws of the United States, and in pursuance of a lawful contract entered into in another State with the shipper, who there paid defendant its carrying charges. It is not competent for the State of Kentucky to declare such a contract unlawful, or to punish defendant for performing it, or to regulate its performance by forbidding delivery to the consignee on the claim that he is a person who is in the habit of becoming intoxicated. If such regulation of interstate commerce is deemed advisable it must proceed from Congress. The States can not interfere until the interstate transportation has been completed by delivery to the consignee. The court has so construed the Wilson Act repeatedly.

In American Express Company vs. Iowa, 196 U. S. 133, the court reversed a judgment of the Supreme Court of Iowa under which intoxicating liquor shipped into that State C. O. D. from Illinois was confiscated in pursuance of prohibitory laws of Iowa. Mr. Justice White, after reviewing the decisions in Bowman vs. Chicago and Northwestern Railway Company, 125 U. S. 465; Leisy vs. Hardin, 135 U. S. 100, and Vance vs. Vandercook Company, No. 1, 170 U. S. 438, said, p. 143:,

"Coming to test the ruling of the court below by the settled construction of the commerce clause of the Constitution, expounded in the cases just reviewed, the error of its conclusion is manifest. Those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce, valid in the States where

made. . . . Beyond possible question, the contract to sell and ship was completed in Illinois. The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by agreement the time when the condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State so as to invalidate a lawful contract as to interstate commerce made in such other State."

The decision in Adams Express Company vs. Kentucky, 206 U. S. 129, is shown by the following head note:

"A statute of Kentucky, making penal all shipments of liquor 'to be paid for on delivery, commonly called C. O. D. shipments,' and further providing that the place where the money is paid or the goods delivered shall be deemed to be the place of sale and that the carrier and his agents delivering the goods shall be jointly liable with the vendor, is, as applied to shipments from one State to another, an attempt to regulate interstate commerce and beyond the power of the State."

In delivering the opinion of the court, Mr. Justice Brewer said, p. 135:

"The testimony showed that the package, containing a gallon of whiskey, was shipped from Cincinnati, Ohio, to George Meece, at East Bernstadt, Kentucky. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. The Kentucky statute is obviously an attempt to regulate such interstate commerce. This is hardly questioned by the Court of Appeals, and is beyond dispute under the decisions of this court.

In Vance vs. Vandercook Company (No. 1), 170 U. S. 438, 444, Mr. Justice White, delivering the opinion of the court, said:

'Equally well established is the proposition that the right to send liquors from one State into another, and the

act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a State law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.'

In Rhodes vs. Iowa, 170 U. S. 412, 426, it was held that the Wilson Act 'was not intended to and did not cause the power of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee.' "

The Wilson Act does not authorize State regulation of the business of carriers at all, either in receiving the liquor in the State of origin, or in transporting it to the State of destination, or in delivering it there, for the State statute can come into play only after delivery, as the court has repeatedly held. The business of an interstate carrier can not be subjected at any stage to State regulation under the Wilson Act. In Rhodes vs. Iowa, 170 U. S. 412, 415, Mr. Justice White, referring to Bowman's case, said:

"It was decided that the transportation of merchandise from one State into and across another was interstate commerce, and was protected from the operation of State laws from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned."

The business of an interstate carrier involves "interstate commerce in its fundamental aspect," and imports "in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States," to use the words of Mr. Justice White, in Rhodes vs. Iowa, 170 U. S., at page 424.

At page 422, referring to the Wilson Act, he says:

"If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the

necessary effect must be to give to the laws of the several States extra territorial operation, for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders, and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute."

In Bowman vs. Chicago & Northwestern Railway Company, 125 U. S. 465, 486, Mr. Justice Matthews, after quoting a passage from the opinion in County of Mobile vs. Kimball, 102 U. S. 691, in which Mr. Justice Field declared that "there can be only one system of rules applicable alike to the whole country" for the regulation of commerce as defined by this court, and "that the authority which can act for the whole country can alone adopt such a system" and that "action upon it by separate States is not therefore permissible," said:

"The principle thus announced has a more obvious application to the circumstances of such a case as the present, when it is considered that the law of the State of Iowa under consideration, while it professes to regulate the conduct of carriers engaged in transportation within the limits of that State, nevertheless materially affects, if allowed to operate, the conduct of such carriers, both as respects their rights and obligations, in every other State into or through which they pass in the prosecution of their business of interstate transportation. In the present case, the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods, which, as a common carrier, by that law, it was bound to accept and carry. It interposes as a defense a law of the State of Iowa, which forbids the delivery of such goods within that State. Has

the law of Iowa any extra territorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery, and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?" 125 U. S. 486.

III.

The Kentucky Statute is an illegal regulation of interstate commerce.

A State statute which compels a carrier to know the contents of his packages, and to ascertain at his peril whether the consignees of all interstate shipments of intoxicating liquor are in the habit of becoming intoxicated, and which denies the right to deliver to such persons an article of commerce in course of transportation from another State, is a plain regulation of interstate commerce. It places the carrier between Scylla and Charybdis, subjecting him, on one hand, to an action for damages by the consignee, and perhaps also to an action in another State by the consignor, if he refuses to deliver, and to a penal action by the State, if he comes to the conclusion that the consignee is not in the habit of becoming intoxicated, and delivers. If the carrier determines not to deliver he has the goods on his hands.

In Wabash, St. Louis & Pacific Railway Company vs. Illinois, 118 U. S. 557, the court held that—

"A statute of a State intended to regulate or to tax or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress" (5th Syllabus).

In Vance vs. W. A. Vandercook Company (No. 1), 170 U. S. 438, 444, Mr. Justice White said:

"Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a State law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States."

Whiskey is an article of commerce which carriers engaged in interstate traffic are bound to carry. In Leisy vs. Hardin, 135 U. S. 100, 110, Chief Justice Fuller said:

"Ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of the courts."

Section 5258 of the Revised Statutes of the United States provides:

"Every railroad company in the United States . . . is hereby authorized to carry upon and over its road . . . all passengers . . . freight and property on their way from any State to another State, and to receive compensation therefor."

In Atlantic Coast Line Railroad Company vs. Wharton, 207 U. S. 328, 334, Mr. Justice Peckham said:

"That any exercise of State authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution is obvious."

In Central of Georgia Railway Company vs. Murphey, 196 U.S. 194, the court held:

"The imposition, by a State statute, upon the initial or any connecting carrier, of the duty of tracing the freight

and informing the shipper, in writing, when, where, how and by which carrier the freight was lost, damaged or destroyed, and of giving the names of the parties and their official positions, if any, by whom the truth of the facts set out in the information can be established, is, when applied to interstate commerce, a violation of the commerce clause of the Federal Constitution; and sections 2317, 2318, of the Code of Georgia of 1895, imposing such a duty on common carriers is void as to shipments made from points in Georgia to other States."

Mr. Justice Peckham said, at page 204:

"The effect of such a statute is direct and immediate upon interstate commerce. It directly affects the liability of the carrier of freight destined to points outside the State, with regard to the transportation of articles of commerce; it prevents a valid contract of exemption from taking effect, except upon a very onerous condition, and it is not of that class of State legislation which has been held to be rather an aid to than a burden upon such commerce. The statute in question prevents the carrier from availing itself of a valid contract, unless such carrier comply with the provisions of the statute by obtaining information which it has no means of compelling another carrier to give, and yet if the information is not obtained the carrier is to be held liable for the negligence of another carrier over whose conduct it has no control. This is not a reasonable regulation in aid of interstate commerce, but a direct and immediate burden upon it."

In Houston and Texas Central Railroad Company vs. Mayes, 201 U. S. 321, it was held that:

"An absolute requirement that a railroad engaged in interstate commerce shall furnish a certain number of cars on a specified day, to transport merchandise to another State, regardless of every other consideration except strikes and other public calamities, transcends the police power of the States and amounts to a burden upon interstate commerce; and articles 4497-5000, Rev. Stat. Texas, being such a requirement, are, when applied to interstate commerce

shipments, void as a violation of the commerce clause of the Federal Constitution.

Such a regulation can not be sustained as to interstate commerce shipments as an exercise of the police power of the state."

In McNeill vs. Southern Railway Co. 202 U. S. 543, the court held that "the interstate transportation of cars from another State which have not been delivered to the consignee, but remain on the track of the railway company in the condition in which they were originally brought into the State, is not completed and they are still within the protection of the commerce clause of the constitution."

Mr. Justice White, in the course of the opinion, said (p. 561):

"Viewing the order which is under consideration in this case as an assertion by the corporation commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce."

In Western Union Telegraph Company vs. Pendleton, 122 U. S. 347, the court held that a statute of Indiana, which required telegraph companies to deliver despatches by messengers to the persons to whom the same were addressed if they resided within one mile of the telegraph station, or within the same town, was repugnant to the commerce clause of the Constitution of the United States, as applied to despatches to other States.

We respectfully submit that the judgment should be reversed and the case remanded with directions to enter judgment for defendant.

LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
Counsel for Plaintiff in Error.